

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ERNESTO CORTES-CASTRO, #94860-004,

Petitioner,

v.

ACTION NO. 2:16cv528

UNITED STATES OF AMERICA,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. Petitioner Ernesto Cortes-Castro is a federal prisoner convicted and sentenced in the United States District Court for the Southern District of Florida, and presently confined at the Federal Correctional Institution in Ashland, Kentucky, although he was confined in a federal correctional institution in Petersburg, Virginia at the time he filed his petition. ECF Nos. 1, 10.

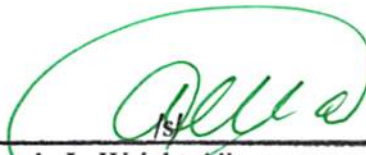
The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. In the Magistrate Judge's Report and Recommendation filed December 22, 2017, the Court found that the "savings clause" in 28 U.S.C. § 2255(e) does not apply to Cortes-Castro's petition to provide an option for challenging the legality of his conviction by means of a section 2241 habeas petition. ECF No. 11. The report recommends that Cortes-Castro's petition for a writ of habeas corpus be

DENIED and DISMISSED without prejudice to him seeking authorization from the Eleventh Circuit to file a successive section 2255 motion.

Cortes-Castro filed objections to the Report and Recommendation on January 9, 2018. ECF No. 12. The Court, having reviewed the record and examined the objections filed by Cortes-Castro to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation. It is, therefore, ORDERED that the petition for a writ of habeas corpus is DENIED and DISMISSED without prejudice to Cortes-Castro seeking authorization from the Eleventh Circuit to file a successive section 2255 motion.

Cortes-Castro may appeal from the Judgment entered pursuant to this Final Order by filing a notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of such Judgment.

The Clerk shall mail a copy of this Final Order to Cortes-Castro and to counsel of record for Respondent.



Arenda L. Wright Allen
United States District Judge

Arenda Wright Allen
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January , 2018


February 2